



February 13, 2004

ENGROSSED SENATE BILL No. 133

DIGEST OF SB 133 (Updated February 11, 2004 3:27 pm - DI 77)

Citations Affected: IC 16-18; IC 16-36; IC 34-30.

Synopsis: Psychiatric advance directives. Allows certain individuals to execute a psychiatric advance directive. Sets forth requirements for a psychiatric advance directive. Provides immunity for a person who violates a psychiatric advance directive for certain reasons. Specifies that a physician is not precluded from treating the patient in a manner that is in the best interest of the patient or another individual. Provides that a health care representative may act in accordance with a psychiatric advance directive. (The introduced version of this bill was prepared by the commission on mental health.)

Effective: July 1, 2004.

Lawson C, Simpson, Breaux, Sipes

(HOUSE SPONSORS — BROWN C, BECKER, WELCH)

January 6, 2004, read first time and referred to Committee on Health and Provider Services.

January 29, 2004, amended, reported favorably — Do Pass.

February 2, 2004, read second time, amended, ordered engrossed.

February 3, 2004, engrossed. Read third time, passed. Yeas 48, nays 1.

HOUSE ACTION

February 5, 2004, read first time and referred to Committee on Public Health.

February 12, 2004, amended, reported — Do Pass.

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ES 133—LS 6114/DI 14+



February 13, 2004

Second Regular Session 113th General Assembly (2004)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2003 Regular Session of the General Assembly.

ENGROSSED SENATE BILL No. 133

A BILL FOR AN ACT to amend the Indiana Code concerning human services.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 16-18-2-296.3 IS ADDED TO THE INDIANA
2 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
3 [EFFECTIVE JULY 1, 2004]: **Sec. 296.3. "Psychiatric advance**
4 **directive", for purposes of IC 16-36-1.5 and IC 16-36-1.7, has the**
5 **meaning set forth in IC 16-36-1.7-1.**
6 SECTION 2. IC 16-36-1.5-5 IS AMENDED TO READ AS
7 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 5. **(a) This section**
8 **applies to a patient who:**
9 (1) receives mental health services; and
10 (2) is mentally incompetent.
11 **(b) A patient described in subsection (a)** shall provide consent for
12 mental health treatment through the informed consent of one (1) of the
13 following:
14 (1) The patient's legal guardian or other court appointed
15 representative.
16 (2) The patient's health care representative under IC 16-36-1.
17 (3) An attorney in fact for health care appointed under

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IC 30-5-5-16.

(4) The patient's health care representative acting in accordance with the patient's psychiatric advance directive as expressed in a psychiatric advance directive executed under IC 16-36-1.7.

SECTION 3. IC 16-36-1.7 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]:

Chapter 1.7. Psychiatric Advance Directives

Sec. 0.5. This chapter does not apply when an individual is detained or committed under IC 12-26-4, IC 12-26-5, IC 12-26-6, or IC 12-26-7.

Sec. 1. As used in this chapter, "psychiatric advance directive" means a written instrument that expresses the individual's preference and consent to the administration of treatment measures for a specific diagnosis for the care and treatment of the individual's mental illness during subsequent periods of incapacity.

Sec. 2. (a) An individual who has capacity may execute a psychiatric advance directive.

(b) The psychiatric advance directive must include the following:

(1) The name of the individual entering into the psychiatric advance directive.

(2) The name of the treatment program and the sponsoring facility or institution in which the individual is enrolled, if applicable.

(3) The name, address, and telephone number of:

(A) the individual's treating physician; or

(B) other treating mental health personnel.

(4) The signature of the individual entering into the psychiatric advance directive.

(5) The date on which the individual signed the psychiatric advance directive.

(6) The name, address, and telephone number of the designated health care representative.

(7) The signature of the psychiatrist treating the individual entering into the psychiatric advance directive, attesting to:

(A) the appropriateness of the individual's preferences stated in the psychiatric advance directive; and

(B) the capacity of the individual entering into the psychiatric advance directive.

(c) The psychiatric advance directive must comply with and is

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1 subject to the requirements and provisions of IC 16-36-1.

2 **Sec. 3. An individual may specify in the psychiatric advance**
 3 **directive treatment measures, including:**

4 (1) admission to an inpatient setting;

5 (2) the administration of prescribed medication:

6 (A) orally; or

7 (B) by injection;

8 (3) physical restraint;

9 (4) seclusion;

10 (5) electroconvulsive therapy; or

11 (6) mental health counseling;

12 **for the care and treatment of the individual's mental illness during**
 13 **a period when the individual is incapacitated.**

14 **Sec. 4. A person who:**

15 (1) treats an individual who has executed a psychiatric
 16 advance directive; and

17 (2) is not aware that the individual being treated has executed
 18 a valid psychiatric advance directive;

19 **is not subject to civil or criminal liability based on an allegation**
 20 **that the person did not comply with the psychiatric advance**
 21 **directive.**

22 **Sec. 5. This chapter does not preclude an attending physician**
 23 **from treating the patient in a manner that is of the best interest of**
 24 **the patient or another individual.**

25 SECTION 4. IC 34-30-2-71.5 IS ADDED TO THE INDIANA
 26 CODE AS A NEW SECTION TO READ AS FOLLOWS
 27 [EFFECTIVE JULY 1, 2004]: **Sec. 71.5. IC 16-36-1.7-4 (Concerning**
 28 **a person who is not aware of, and does not comply with, a**
 29 **psychiatric advance directive).**

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SENATE MOTION

Madam President: I move that Senators Simpson, Breaux and Sipes
be added as coauthors of Senate Bill 133.

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COMMITTEE REPORT

Madam President: The Senate Committee on Health and Provider Services, to which was referred Senate Bill No. 133, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, line 3, after "advance" insert **"directive", for purposes of IC 16-36-1.5 and IC 16-36-1.7, has the meaning set forth in IC 16-36-1.7-1."**

Page 1, delete lines 4 through 17.

Page 2, delete lines 1 through 3.

Page 2, line 24, delete "directive." and insert **"directive executed under IC 16-36-1.7."**

SECTION 3. IC 16-36-1.7 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]:

Chapter 1.7. Psychiatric Advance Directives

Sec. 1. As used in this chapter, "psychiatric advance directive" means a written medical directive that expresses the individual's preference and consent to or refusal of the administration of treatment measures for a specific diagnosis for the care and treatment of the individual's mental illness during subsequent periods of incapacity.

Sec. 2. (a) An individual who has capacity may execute a psychiatric advance directive.

(b) The psychiatric advance directive must include the following:

- (1) The name of the individual entering into the psychiatric advance directive.**
- (2) The name of the treatment program and the sponsoring facility or institution in which the individual is enrolled, if applicable.**
- (3) The name, address, and telephone number of:**
 - (A) the individual's treating physician; or**
 - (B) other treating mental health personnel.**
- (4) The signature of the individual entering into the psychiatric advance directive.**
- (5) The date on which the individual signed the psychiatric advance directive.**
- (6) The name, address, and telephone number of the designated health care representative.**
- (7) The signature of the psychiatrist treating the individual**

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entering into the psychiatric advance directive, attesting to:

- (A) the appropriateness of the individual's preferences stated in the psychiatric advance directive; and
- (B) the capacity of the individual entering into the psychiatric advance directive.

(c) The psychiatric advance directive must comply with and is subject to the requirements and provisions of IC 16-36-1.

Sec. 3. An individual may specify in the psychiatric advance directive treatment measures, including:

- (1) the administration of prescribed medication:
 - (A) orally; or
 - (B) by injection;
- (2) physical restraint;
- (3) seclusion;
- (4) electroconvulsive therapy; or
- (5) mental health counseling;

for the care and treatment of the individual's mental illness during a period when the individual is incapacitated.

Sec. 4. A person who:

- (1) treats an individual who has executed a psychiatric advance directive; and
- (2) is not aware that the individual being treated has executed a valid psychiatric advance directive;

is not subject to civil or criminal liability based on an allegation that the person did not comply with the psychiatric advance directive.

Sec. 5. An attending physician may deviate from the psychiatric advance directive when treating an individual if the attending physician believes in good faith that the deviation is in the best interest of the patient or another individual.

SECTION 4. IC 34-30-2-71.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: **Sec. 71.5. IC 16-36-1.7-4 (Concerning a person who is not aware of, and does not comply with, a psychiatric advance directive)."**

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 133 as introduced.)

MILLER, Chairperson

Committee Vote: Yeas 8, Nays 0.

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SENATE MOTION

Madam President: I move that Senate Bill 133 be amended to read as follows:

Page 1, delete lines 6 through 10.

Page 2, line 16, delete "medical directive" and insert "**instrument**".

Page 2, line 17, delete "or refusal of".

Page 3, line 24, delete "An attending physician may deviate from the psychiatric" and insert "**This chapter does not preclude an attending physician from treating the patient in a manner that is of the best interest of the patient or another individual.**".

Page 3, delete lines 25 through 27.

Renumber all SECTIONS consecutively.

(Reference is to SB 133 as printed January 30, 2004.)

LAWSON C

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Public Health, to which was referred Senate Bill 133, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 2, between lines 9 and 10, begin a new paragraph and insert:

"Sec. 0.5. This chapter does not apply when an individual is detained or committed under IC 12-26-4, IC 12-26-5, IC 12-26-6, or IC 12-26-7."

Page 2, after line 42, begin a new line block indented and insert:

"(1) admission to an inpatient setting;"

Page 3, line 1, delete "(1)" and insert **"(2)"**.

Page 3, line 4, delete "(2)" and insert **"(3)"**.

Page 3, line 5, delete "(3)" and insert **"(4)"**.

Page 3, line 6, delete "(4)" and insert **"(5)"**.

Page 3, line 7, delete "(5)" and insert **"(6)"**.

and when so amended that said bill do pass.

(Reference is to SB 133 as reprinted February 3, 2004.)

BROWN C, Chair

Committee Vote: yeas 11, nays 0.

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